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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/632,596  
Filing Date: August 01, 2003  
Appellant(s): POPP ET AL.

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H. Michael Kubicki  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 1/22/08 appealing from the Office action mailed 8/23/07.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

2002/0123730	Popp et al.	9-2002
WO 97/49618	Kuske	12-1997

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1-22 are rejected under 35 U.S.C. 102(a) as being anticipated by Popp et al. US Patent Application Publication 2002/0123730.

As to claims 1, 11, 12, 13, and 18, Popp discloses a packaged garment defining a waist opening 50 and a leg opening 52, the garment comprising, a front region 22 comprising a front panel 35 and defining a front waist edge 38, a back region 24 comprising a back panel 135 and defining a back waist edge 39, and a crotch region 26 connecting the

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front and back regions; first and second front side panels 34 extending transversely from respective sides of the front panel, each front side panel having a body facing surface 42 and a clothing facing surface 40; first and second back side panels 134 extending transversely from respective sides of the back panel, each back side panel having a body facing surface 42 and a clothing facing surface 40; wherein the first front side panel is connected to the first back side panel to form a first prefastened, refastenable seam 80, the first refastenable seam comprising a first fastening component 82; the second front side panel is connected to the second back side panel to form a second prefastened, refastenable seam 80, the second refastenable seam comprising a second fastening component 82; wherein the first and second fastening components lie in first and second planes, the first and second planes being approximately perpendicular to a plane in which the front panel lies.

As to claims 2 and 16, Popp discloses the first and second refastenable seams 80 are formed between a body-facing surface 42 of the front side panel and a clothing-facing surface 40 (paragraph 0080) of the back side panel (paragraph 0091).

As to claims 3 and 15, Popp discloses the first and second front side panels are folded over a distal edge of the back side panel (Figure 6, paragraphs 0106-0109).

As to claim 4, Popp discloses the fastening component is permanently bonded to the back side panel (0091).

As to claims 5 and 14, Popp discloses the first and second refastenable seams are formed between a clothing-facing surface of the front side panel and a body-facing surface of the back side panel (0091).

As to claims 6 and 17, Popp discloses the first and second back aback side panel is folded over a distal edge of the front side panel (Figure 6, paragraphs 0106-0109).

As to claim 7, Popp discloses the fastening component is permanently bonded to the front side panel (paragraph 0091).

As to claim 8, Popp discloses the fastening component is engaged with a mating fastening component, wherein the mating fastening component is integral with a side panel (paragraphs 0092, 0093).

As to claims 9 and 10, see Figures 1-3.

As to claims 12 and 13 see Figures 1-3, paragraph 0110.

As to claim 19-22, Popp discloses a package of prefastened, refastenable garments; see the discussion of claim 1, *supra*. Popp further incorporates by reference (paragraph 0013) Kuske WO 97/49618, which teaches a generally polyhedral enclosure composed

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of a flexible material surrounding a plurality of prefastened, refastenable garments including an end garment as claimed, the polyhedral enclosure comprising a pair of side walls, a pair of end walls, a top wall, and a bottom wall (Figures 3-12).

#### **(10) Response to Argument**

Applicant's arguments filed 1/22/08 have been fully considered but they are not persuasive. Applicant repeats the argument that the '730 patent is directed to packaged, prefastened pant-like garments whose fastener lies in a plane that is parallel to the plane in which the front and back portions of the garment lie, while the present invention in contrast is directed to packaged, prefastened pant-like garments whose fastener lies in a plane that is perpendicular to the in which the front panel lies. Applicant argues the Examiner has a fundamental misunderstanding of the nature of a plane and the term "plane" is defined by Appellants as : the "plane" in which a component lies is the plane which includes the components largest two dimensions" However, any three points defines a plane. Even with the largest two dimensions of the fastening components, three points can extend vertically or horizontally. Thus, Popp teaches a fastening component 82 that lies perpendicular to a plane in which the front panel lies.

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**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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